

an understanding of government operations or activities”;

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to “public understanding”; and

(iv) The significance of the contribution to public understanding: Whether disclosure is likely to contribute “significantly” to public understanding of government operations or activities.

(4) The Agency will employ the following factors in determining whether the second requirement has been met:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is “primarily in the commercial interest of the requester.”

(5) In all cases, the burden shall be on the requester to present information in support of a request for a waiver of fees. A request for reduction or waiver of fees should include:

(i) A clear statement of the requester's interest in the requested documents;

(ii) The use proposed for the documents and whether the requester will derive income or other benefit from such use;

(iii) A statement of how the public will benefit from such use and from the release of the requested documents; and

(iv) If specialized use of the documents or information is contemplated, a statement of the requester's qualifications that are relevant to the specialized use.

(6) A request for reduction or waiver of fees shall be addressed to the appropriate Freedom of Information Officer. The requester shall be informed in writing of the Agency's decision whether to grant or deny the fee waiver or fee reduction request. This decision may be appealed by letter addressed to the EPA Freedom of Information Offi-

cer. The General Counsel shall decide such appeals. The General Counsel may redelegate this authority only to the Deputy General Counsel or the Associate General Counsel for Grants, Contracts and General Law.

(e) The Financial Management Office shall maintain a record of all fees charged requesters for searching for, reviewing and reproducing requested records under this section. If after the end of 60 calendar days from the date on which request for payment was made the requester has not submitted payment to the appropriate EPA billing address (as listed in § 2.120(b)), the Financial Management Division shall place the requester's name on a delinquent list which is sent to the EPA Freedom of Information Officer. If a requester whose name appears on the delinquent list makes a request under this part, the EPA Freedom of Information Officer shall inform the requester that EPA will not process the request until the requester submits payment of the overdue fee from the earlier request. Any request made by an individual who specifies an affiliation with or representation of a corporation, association, law firm, or other organization shall be deemed to be a request by the corporation, association, law firm, or other organization. If an organization placed on the delinquent list can show that the person who made the request for which payment was overdue did not make the request on behalf of the organization the organization will be removed from the delinquent list but the name of the individual shall remain on the list. A requester shall not be placed on the delinquent list if a request for a reduction or for a waiver is pending under paragraph (d) of this section.

[53 FR 217, Jan. 5, 1988]

§ 2.121 Exclusions.

(a) Whenever a request is made which involves access to records described in § 2.118(a)(7)(i)(A), and

(1) The investigation or proceeding involves a possible violation of criminal law; and

(2) There is reason to believe that the subject of the investigation or proceeding is not aware of its pendency, and disclosure of the existence of such

records could reasonably be expected to interfere with enforcement proceedings, EPA shall, during only such time as the circumstances continue, treat the records as not subject to the requirements of 5 U.S.C. 552 and this subpart.

(b) Whenever informant records maintained by the Agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier and the informant's status as an informant has not been officially confirmed, EPA shall treat the records as not subject to the requirements of 5 U.S.C. 552 and this subpart.

(c) No determination relying on this section shall be issued without the concurrence of the General Counsel or his designee. The General Counsel has designated the Contracts and Information Law Branch to act on these requests for concurrence.

(d) An initial determination which only relies on this section will not include notice of appeal rights.

[53 FR 219, Jan. 5, 1988]

Subpart B—Confidentiality of Business Information

§ 2.201 Definitions.

For the purposes of this subpart:

(a) *Person* means an individual, partnership, corporation, association, or other public or private organization or legal entity, including Federal, State or local governmental bodies and agencies and their employees.

(b) *Business* means any person engaged in a business, trade, employment, calling or profession, whether or not all or any part of the net earnings derived from such engagement by such person inure (or may lawfully inure) to the benefit of any private shareholder or individual.

(c) *Business information* (sometimes referred to simply as *information*) means any information which pertains to the interests of any business, which was developed or acquired by that business, and (except where the context otherwise requires) which is possessed by EPA in recorded form.

(d) *Affected business* means, with reference to an item of business informa-

tion, a business which has asserted (and not waived or withdrawn) a business confidentiality claim covering the information, or a business which could be expected to make such a claim if it were aware that disclosure of the information to the public was proposed.

(e) *Reasons of business confidentiality* include the concept of trade secrecy and other related legal concepts which give (or may give) a business the right to preserve the confidentiality of business information and to limit its use or disclosure by others in order that the business may obtain or retain business advantages it derives from its rights in the information. The definition is meant to encompass any concept which authorizes a Federal agency to withhold business information under 5 U.S.C. 552(b)(4), as well as any concept which requires EPA to withhold information from the public for the benefit of a business under 18 U.S.C. 1905 or any of the various statutes cited in § 2.301 through § 2.309.

(f) [Reserved]

(g) Information which is *available to the public* is information in EPA's possession which EPA will furnish to any member of the public upon request and which EPA may make public, release or otherwise make available to any person whether or not its disclosure has been requested.

(h) *Business confidentiality claim* (or, simply, *claim*) means a claim or allegation that business information is entitled to confidential treatment for reasons of business confidentiality, or a request for a determination that such information is entitled to such treatment.

(i) *Voluntarily submitted information* means business information in EPA's possession—

(1) The submission of which EPA had no statutory or contractual authority to require; and

(2) The submission of which was not prescribed by statute or regulation as a condition of obtaining some benefit (or avoiding some disadvantage) under a regulatory program of general applicability, including such regulatory programs as permit, licensing, registration, or certification programs, but excluding programs concerned solely or